

COMMONWEALTH OF VIRGINIA
Department of Juvenile Justice (DJJ)
REQUEST FOR PROPOSALS (RFP)

RFP # DJJ-08-003

NIGP Code: 94872; UNSPC Code: 85121901

Issue Date: January 7, 2008

Title: Pharmacy Services

Issuing Agency: Department of Juvenile Justice
Procurement Office
700 Centre Building, 4th Floor
700 East Franklin Street (PO Box 1110)
Richmond, VA 23218-1110

Using Agency and/or Location All DJJ Facilities
Where work Will Be Performed: (locations throughout the Commonwealth).

PERIOD OF CONTRACT: Shall commence on July 1, 2008 for a period of 2 years with the option to renew for three (3) additional one year periods.

MANDATORY PRE-PROPOSAL CONFERENCE: Will be held on **January 23, 2008 at 10:00 AM** at DJJ, 700 E. Franklin St. Richmond, VA. Report to the 4th Floor Receptionist (See Section VIII).

SEALED PROPOSALS WILL BE RECEIVED UNTIL February 27, 2008 at 2:00 P.M. (Eastern Standard Time) For Furnishing The Goods/Services Described Herein.

Direct all Inquiries for Technical Information in Writing, to: DJJ Health Services, Attn. Tim Joost, PO Box 1110, Richmond, VA 23218-1110 or via FAX: 804-371-0727. E-mail: Tim.Joost@djj.virginia.gov.

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF PROPOSALS ARE HAND DELIVERED OR SENT BY COURIER: deliver to DJJ, 700 Centre, 700 East Franklin St., 4th Floor, Main Receptionist, Richmond, Virginia.

All bid packages shall be identified as RFP DJJ-08-003 and designated for James E. Harris, Jr., VCO. All proposals received after the appointed date and hour for receipt, whether mailed or otherwise, will be returned unopened. The time of receipt shall be determined by the time received at the Reception Desk. Offerors have the sole responsibility for assuring proposals are received in the purchasing office by the designated date and time. Faxed or oral bids will not be accepted.

In Compliance With This Request for Proposals and to All the Conditions Imposed Therein and Hereby Incorporated By Reference, The Undersigned Offers and Agrees to Furnish the Services In Accordance With the Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

NAME AND ADDRESS OF FIRM:

Zip Code: _____
Telephone: (_____) _____
FEI/FIN #: _____

BY AUTHORIZED REPRESENTATIVE:

Name: _____
Please Print
Corporate Title: _____
Signature: _____
Date: _____
Fax: (_____) _____

This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

THIS ENTIRE DOCUMENT MUST BE RETURNED

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- I. PURPOSE:** The purpose and intent of this Request for Proposals (RFP) is to establish a term contract with a qualified company to establish and operate a medication distribution system for juveniles assigned to Department of Juvenile Justice (DJJ) facilities.
- II. BACKGROUND:** The Department of Juvenile Justice provides health care services for approximately 1,000 wards at various locations throughout the State of Virginia. A list of all institutions is provided in Attachment A. General information and directions may be found under residential programs at www.djj.virginia.gov. The Commonwealth reserves the right to add additional institutions to the contract during the term of the contract.
- III. POLICY STATEMENT:** It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, or other contractual opportunities. By submitting a proposal, offerors certify that all information provided in response to this RFP is true and accurate.
- IV. STATEMENT OF NEEDS:** The selected Contractor shall provide the following services in compliance with all applicable State and Federal Laws, Board of Juvenile Justice policies and Department of Juvenile Justice Procedures, and National Commission on Correctional Health Care standards.
- A. GENERAL REQUIREMENTS:**
1. Supply all prescription formulary and non-formulary drugs, injectables, intravenous products, syringes, sundries and other over-the counter (OTC) products.
 2. Develop and maintain, subject to DJJ review and approval, a formulary specifically designed for the Virginia Department of Juvenile Justice.
 3. Maintain a computerized drug interaction monitoring system for DJJ wards based upon the patient profile and documented recommendations. The monitoring system shall provide potential drug and food interactions.
 4. Assist in designing and implementing policies, procedures and protocols for medication distribution and control, subject to the approval of DJJ Chief Physician and Health Services Administrator. Any work product developed from this process shall become the property of the DJJ.
- B. SPECIFIC REQUIREMENTS:**
1. Packaging: Prescription tablets and capsules must be individually packaged in “unit of use” hermetically sealed bags, with each medication individually sealed and labeled according to Physician prescription instructions. Medications shall be packaged in light and/or humidity resistant containers as appropriate.
 2. Dispensing:
 - a. Prescription liquids shall be dispensed in multi-dose bottles, and prescription creams dispensed as supplied by the manufacturer.
 - b. Non-prescription drugs and ointments shall be dispensed according to the protocol previously stated for prescription tablets, capsules, liquids and creams.

- c. Provide and fill prescriptions for non-psychotropic medications for wards leaving on writ or discharge for a period of two (2) weeks, or in sufficient quantity to complete the current prescription if less than two (2) weeks. Psychotropic medications will be issued in a sufficient quantity for a period of 30 days.
3. Labeling: Each prescription container shall be labeled to include ward name, number, date, prescribing physician, medication name, lot number, expiration date, strength, dosage, directions for administration and any applicable warnings or dietary instructions or other information in compliance with federal requirements and the laws of the Commonwealth of Virginia. Each new prescription must be accompanied by a computer generated label that will contain all administration information and can be affixed to the Medication Administration Record (MAR).
4. Hours of Service: Receive and fill routine prescription drug orders between the hours of 8:30 a.m. and 7:00 p.m. (Eastern Standard Time), Monday through Friday, excluding State holidays (Attachment C). Prescription orders received by the Selected Contractor by 2:00 p.m. (Eastern Standard Time) Monday through Friday will be delivered to the ordering DJJ Correctional Health Care Unit no later than noon the following day. A system for the provision of twenty-four (24) hours/day, seven (7) days/week emergency service, including deliveries, will be provided. A system to ensure orders for formulary antibiotics to be provided within four hours of physicians orders.
5. Delivery: Establish a system for verification of the receipt of orders and delivery of medications.
6. Returns: Provide a system for the return of expired and discontinued medications and the destruction of unused control medications.
7. Out of stock items: No “back ordering” of medications for prescriptions will be allowed. Orders which cannot be filled due to an “out of stock” condition will be reported to the institution and filled through a local retail pharmacy network established by the Selected Contractor at no additional cost to the Commonwealth.
8. Emergencies: Provide on-site “stat dose” capability for emergency stock of drugs in unit of use packages to be used in emergency situations or until regular delivery of medications. The specific drugs and quantities WILL be determined by the Chief Physician in conjunction with the Selected Contractor and the Therapeutics Committee. Emergency drugs shall be provided in sealed emergency kit(s) requested by the DJJ Chief Physician.
9. Non-formulary: Provide a system for the “Preauthorization,” acquisition and vendor payment for non-formulary medications.
10. REPORTS: On a monthly basis, the Contractor shall provide the following reports in a hard copy and electronic format acceptable to the Department of Juvenile Justice. The DJJ utilizes Microsoft Office Professional Suite as its basic platform of applications:
 - a. Institutions: The Contractor shall provide a printed Medication Administration Record (MAR) to include all information contained on the prescription label, the name of the practitioner who prescribed the medication and reflect **all current medications**.
 - b. DJJ Health Services: Contractor shall provide the DJJ Health Services Unit with summary information for all institutions. Data shall encompass specific drug utilization statistics, physician

prescribing habits, psychotropic and narcotic medication utilization, and other utilization data deemed necessary by the DJJ and the Contractor.

11. CONTRACTOR PERSONNEL AND SERVICES: Contractor shall provide a registered Pharmacist licensed in the Commonwealth of Virginia to perform the following:
 - a. Drug utilization review as requested by the DJJ;
 - b. Conduct quarterly inspections of all facility areas where medications are maintained. Inspection shall include, but not be limited to the expiration dates, security, storage and review of medication records;
 - c. Supply clinical pharmacy services to each Department Medical, Dental and Nursing Staff as needed;
 - d. Attend, at least quarterly, Medical Quality Assurance and Pharmacy and Therapeutics Committee meetings conducted by the DJJ. The Selected Contractor will implement the Medical Audit Committee and the Pharmacy and Therapeutics Committee recommendations as directed by the DJJ Health Services Administrator.
12. CONTRACTOR PROVIDED EQUIPMENT: Provide each DJJ Correctional Health Care Unit the following equipment and supplies at no additional cost to the DJJ:
 - a. Medication carts (or other suitable mechanical drug-delivery device) for dispensing medications in the packing form provided. These carts are subject to approval by the Health Services Administrator.
 - b. A current Physician's Desk Reference ("PDR") annually in hard copy and/or electronic format
 - c. One (1) facsimile machine for each facility infirmary and halfway house where medications may be ordered, and any necessary maintenance, for use in the submission of medication orders through facsimile machine transmission, utilizing a single form of ordering of multiple prescriptions.
 - d. Additionally, the Selected Contractor shall furnish either a local or toll-free number for facility use in transmission of new prescription orders and changes in orders; all forms necessary for submission of new orders change orders, stop orders or discontinue orders.
13. ELECTRONIC PHARMACY MANAGEMENT SYSTEM: Provide an electronic system for management of pharmacy services including (at a minimum) the following:
 - a. Online ordering of patient medications
 - b. Patient profile (medication history)
 - c. Order details
 - d. Order history (by patient)
 - e. Refill orders
 - f. Discontinue prescriptions
 - g. Edit/Add patient information
 - h. Transfer patients among facilities
 - i. Add new prescription
 - j. Add stock orders
 - k. View formulary

- l. View returns
- m. Manage returns
- n. Electronic MAR

If the vendor does not have the capability to provide all of these services, an anticipated date for having these services available should be noted in the response.

14. COORDINATION OF BENEFITS: The vendor should detail ability to provide coordination of pharmacy benefits for those residents who have primary health insurance.
15. TRAINING: Prepare a training plan which includes facility-based training at each institution, assure an orderly transition to new policies and procedures, and provide assistance on an ongoing basis as needed.
16. RECORDS: Maintain business records and prescription files covering prescriptions dispensed on behalf of the DJJ wards as required by law. Such records may be reviewed by the DJJ or duly authorized Representatives of the DJJ.
 - Except as required by law, the Selected Contractor shall not make any of its records available to others for any other purpose than the provision of drugs under this agreement provided, however, such data may be combined by vendor and used in preparing statistical analysis reports which may be made available to others, if information relating to the DJJ or any ward will not be identifiable from the data.
17. CONFIDENTIALITY: The contractor acknowledges and understands that its employees may have access to confidential information, including Protected Health Information (PHI) regarding clients/patients. In addition, the Contractor acknowledges and understands that its employees may have access to other proprietary or other confidential information or business information belonging to the Virginia Department of Juvenile Justice. Therefore, except as required by law, the Contractor agrees that its employees will not:
 - a. Access or attempt to access data that is unrelated to their job duties or authorization;
 - b. Access or attempt to access Protected Health Information beyond their states authorized HIPAA access level;
 - c. Disclose to any other person or allow any other person access to any information related to DJJ or any of its facilities or any other user of this contract that is proprietary or confidential and/or pertains to clients/patients. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communications, written documentation, "loaning" computer access codes and/or another transmission or sharing of data.
 - d. Disclose Protected Health Information in violation of HIPAA regulations. The Contractor understands that DJJ and its employees, clients/patients, or other may suffer irreparable harm by disclosure of proprietary or confidential information and that the Commonwealth of Virginia may seek legal remedies available to it should such disclosure occur. Further, the Contractor understands that violations of this agreement may result in default.
 - e. The Contractor further assures that information and data obtained during the performance of this agreement shall be considered confidential, during and following the terms of this agreement, and will not be divulged without the Purchasing Agency's written consent and then only in strict accordance with prevailing laws.

- f. The Contractor shall hold all information providing by the Purchasing Agency as proprietary and confidential, and shall make no authorized reproduction or distribution of such material.

V. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:

- A. **PREPARATION REQUIREMENTS:** In order to be considered for selection, Offerors must submit a complete response to this RFP. Proposals should be as thorough and detailed as possible so that the Purchasing Agency may properly evaluate the capability of the Offeror to provide the required services. Offerors are required to comply with the following instructions:
1. **AUTHORIZED REPRESENTATIVE:** Proposals shall be signed by an authorized representative of the Offeror. All information requested must be submitted. Failure to submit all information requested may result in the Purchasing Agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the Purchasing Agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
 2. **COMPLETENESS:** Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
 3. **ORGANIZATION OF PROPOSAL:** Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub-letter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub-letter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the Offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
 4. **BINDINGS:** Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
 5. **OWNERSHIP/TRADE SECRETS:** Ownership of all data, materials and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protections of Section 11-52D of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.

6. ORAL PRESENTATION: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the Purchasing Agency. This provides an opportunity for the Purchasing Agency to ask questions and the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The Purchasing Agency will schedule the time and location of these presentations. Oral presentations are an option of the Purchasing Agency and may or may not be conducted.

B. SUBMISSION REQUIREMENTS: One (1) **original and five (5)** copies of the proposal must be submitted to the Purchasing Agency. No other distribution of the proposals shall be made by the Offeror. The following must be included in the proposal:

1. All Offerors shall use the attached Proposal Form in submitting their proposal and certifying acceptance of the terms and conditions associated with the solicitation. **The Purchasing Agency will not accept oral or FAX proposals.**
2. Signature(s): The Proposal Form must be signed in order to be considered. If the Offeror is a corporation, the proposal must be submitted in the name of the corporation, not simply in the corporation's trade name. In addition, the Offeror must indicate the corporate title of the individual signing the proposal. By signature the Offeror certifies acceptance of all terms and conditions specified in the solicitation.
3. The Proposal Form, and any other documents required, shall be submitted in a sealed envelope.
4. NARRATIVE: A written narrative statement shall be submitted that includes:
 - a. Experience in providing the services described herein. Provide a list of all contracts you currently have in place for correctional facilities. In addition, provide a list of other contracts you have for providing services of a similar nature and size;
 - b. Provide a complete narrative that described how you will provide the services outlined in the statement of needs;
 - c. Provide an organization chart for your company and describe how the contract will be managed as well as staff experience;
 - d. Provide audited financial statements for your most recent fiscal year;
 - e. Proposed services:
 - 1) How the delivery system will operate;
 - 2) How the service will be performed;
 - 3) Define how the prescription process will be managed and controlled;
 - 4) Explain how the local pharmacy relationship will be established and operated;
and
 - 5) Time frame for start of operation after the contract is signed.
5. Provide samples of all proposed documents, including invoice to be used in the billing process.
6. Provide information as required in Attachment B.

- A. **OFFERORS REPRESENTATION:** Offerors, by submission of a proposal, represent that they have read and understand the solicitation documents and specifications and have familiarized themselves with all federal, state and local laws, ordinances, rules and regulations that may affect the cost, progress or performance of the work.

The failure or omission of any Offeror to receive or examine any form, instrument, addendum or other documents, or to acquaint itself with **conditions existing at the site**, shall in no way relieve the **Offeror from any obligations with respect to its proposal or to the contract.**

- B. **IDENTIFICATION OF PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed Proposal should be returned in a separate envelope or package, sealed and identified in the sample as follows:

From: _____	_____	_____
Name of Offeror	Due Date	Time
_____	<u>DJJ-08-003</u>	<u>Pharmacy Services</u>
Street or Box Number	RFP No.	RFP Title
_____	<u>James E. Harris, Jr., VCO</u>	_____
City, State, Zip Code	Name of Contract Officer	

The envelope should be addressed as directed on Page 1 of the solicitation.

If a proposal not contained in the special envelope is mailed, the offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

VI. **EVALUATION AND AWARD CRITERIA:**

- A. **EVALUATION CRITERIA:** Proposals will be evaluated by the Purchasing Agency using the following criteria:

	Total Possible Score
Proposed Services	30
Approach to providing the service	25
Pricing Model	25
Experience in providing the service, including staff experience.	10
References from other clients	10

- B. **AWARD:** The Commonwealth shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage the public body may discuss non-binding estimates of total project costs, including, but not limited to,

life-cycle costing, and, where appropriate, non-binding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing agency shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the purchasing agency can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on, until such a contract can be negotiated at a fair and reasonable price. Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

VII. REPORTING AND DELIVERY REQUIREMENTS: Monthly Reports shall be provided as indicated below.

- A. Facilities: Data shall encompass specific drug utilization statistics, physician prescribing habits, psychotropic and narcotic medication utilization, and other utilization data deemed necessary by the DJJ and the Contractor.
- B. DJJ Office of Health Services: Summary information as prescribed by the Purchasing Agency for all institutions/facilities will be provided to the DJJ Office of Health Services.

Information must be provided in hard copy and electronic format acceptable to the Purchasing Agency. Reports should be mailed to reach the institutions and the DJJ Office of Health Services by the **tenth day of the month following the month of the report.**

VIII. MANDATORY PREPROPOSAL CONFERENCE: A mandatory proposal conference will be held at 10:00 A.M., January 23, 2008, 700 E. Franklin Street, Richmond, Virginia. Report to the 4th Floor Receptionist. The purpose of this conference is to allow potential Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

Due to the importance of all offerors having a clear understanding of the specifications/scope of work and requirements of this solicitation, **attendance at this conference will be a prerequisite for submitting a proposal.** Proposals will only be accepted from those offerors who are represented at this pre-proposal conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster. **NO ONE WILL BE ADMITTED AFTER 10:05 A.M.**

IX. GENERAL TERMS AND CONDITIONS:

- A. VENDORS MANUAL: This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the Vendors Manual. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- B. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9

of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

- C. ANTI-DISCRIMINATION: By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their proposals, offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. DEBARMENT STATUS: By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of

goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

- G. ANTITRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFP: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. CLARIFICATION OF TERMS: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. PAYMENT:
1. To Prime Contractor:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not

relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).

2. To Subcontractors:

a. A contractor awarded a contract under this solicitation is hereby obligated:

- (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

K. PRECEDENCE OF TERMS: The following General Terms and Conditions, VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORMS AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. QUALIFICATIONS OF OFFERORS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

- N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. TAXES: Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

- R. USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.
- S. TRANSPORTATION AND PACKAGING: By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. INSURANCE: By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

Profession/Service**Limits**

Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations

\$1,925,000 per occurrence,
\$3,000,000 aggregate

(Limits increase each July 1 through fiscal year 2008, as follows:

July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the Code of Virginia.

- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.state.va.us) for a minimum of 10 days.
- V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
- W. **NONDISCRIMINATION OF CONTRACTORS:** A offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic

Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the proposal being rejected.

- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
- c. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

Y. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

X. SPECIAL TERMS AND CONDITIONS:

- A. ADVERTISING In the event a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to the VA Department of Juvenile Justice will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- B. AUDIT: The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- C. CANCELLATION OF CONTRACT: The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- D. AWARD: The Commonwealth shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage the public body may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, non-binding estimates of price for services. Proprietary

information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing agency shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the purchasing agency can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on, until such a contract can be negotiated at a fair and reasonable price. Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

- E. CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT: By my signature on this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the goods/services specified (please complete below as appropriate):

Contractor Name:_____ Subcontractor Name:_____

License # _____ Type _____

- F. SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS: The contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.
- G. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.
- H. PRIME CONTRACTOR RESPONSIBILITIES: The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- I. PRODUCT INFORMATION: The offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the proposal to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the proposal to be considered nonresponsive.
- J. QUANTITIES: Quantities set forth in this solicitation are estimates only, and the contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

- K. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for three (3) successive one (1) year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the Medical Commodities category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
 2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the Medical Commodities category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
- L. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- M. **eVA Business-To-Government Contracts and Orders:** The solicitation/contract will result in a purchase order with the eVA transaction fee specified below assessed:
1. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - a. DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - b. Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.
- The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.
- Internet electronic procurement solution, website portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.
- N. **CONFIDENTIALITY (Commonwealth):** The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with § 11-52D of the Code of Virginia. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.

- O. CONFIDENTIALITY (Contractor): The Contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and agency's written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. The prime contractor by virtue of signing this RFP will ensure any employees working on this project maintain ward confidentiality.
- P. DEFINITION – EQUIPMENT: As used herein, the terms equipment, produce, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.
- Q. DEFINITION – SOFTWARE: As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.
- R. DEMONSTRATIONS: By submitting a proposal, the offeror certified that the specified equipment is in productive use and capable of demonstration in the proposed configuration. The Commonwealth reserves the right to require offerors to demonstrate the functionality of proposed equipment to its satisfaction prior to making an award decision. Such demonstration is intended to show that a vendor's products will perform in a completely satisfactory manner and that they will meet or exceed the performance specifications contained in the solicitation. Failure by a vendor to promptly comply with a request for demonstration could result in their proposal receiving a lowered score or eliminated from further consideration. Failure to reject shall not relieve the vendor of its obligation to fully comply with all requirements of the contract.
- S. EQUIPMENT ENVIRONMENT: Environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in writing along with the vendor's proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in the solicitation, it will be the procuring agency's responsibility to prepare the site at its own expense to meet the environmental specifications provided.
- T. EXCESSIVE DOWNTIME: Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of in operability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than 3 consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within 3 days following the request for replacement.
- U. LATEST SOFTWARE VERSION: Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.
1. LIMITATION OF USE: The Commonwealth's right to use computer software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding any provision to the contrary however, the Commonwealth shall have at a minimum: unlimited use of the software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should be primary system become unavailable, malfunction, or is otherwise rendered inoperable; use of the software at another Commonwealth site should the

system be entirely transferred to that location; the right to make a backup copy for safekeeping, the right to modify or combine the software with other programs or materials at the Commonwealth's risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the Commonwealth. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by the Commonwealth, the contractor's sole remedy shall be to pursue a monetary claim in accordance with § 11-69 of the Code of Virginia.

2. NEW EQUIPMENT: Unless otherwise expressly stated in this solicitation, any equipment furnished under the contract shall be new, unused equipment.
3. OPERATIONAL COMPONENTS: Unless otherwise requested in the solicitation, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.
4. OWNERSHIP OF INTELLECTUAL PROPERTY: All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the contractor shall promptly provide an acknowledgement or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.
5. PRODUCT SUBSTITUTION: During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.
6. SOFTWARE UPGRADES: The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.
7. SOFTWARE DISPOSITION: Unless otherwise instructed by the contractor, the Commonwealth shall render unusable all copies of software acquired under the contract within thirty days of termination of its license, except that the Commonwealth does reserve the right to retain one copy of the software for archival purposes when appropriate.
8. SOURCE CODE: In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Commonwealth shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the Commonwealth shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the Commonwealth in this respect shall survive for a period of twenty years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.
9. TERM OF SOFTWARE LICENSE: Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall

continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.

10. **THIRD PARTY ACQUISITION OF SOFTWARE:** The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.
11. **TITLE TO SOFTWARE:** By submitting a proposal, the offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
12. **WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.
13. **WARRANTY OF SOFTWARE:** The contractor warrants the operation of all software products for a period of 24 months from the date of acceptance. During the warranty period, the contractor shall provide 24 hour toll-free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a two-hour return call response time and complete all necessary patches/fixes within 24 hours of initial notification.

XI. METHOD OF PAYMENT: The Contractor will be paid on a monthly basis upon receipt of a valid invoice from the Contractor. The invoice will be a consolidated invoice for service to all institutions with detail provided for each institution. Payment will be in accordance with the Prompt Pay Act.

XII. ATTACHMENTS:

- A. State Facility Locations
- B. State Holidays (standard ones; subject to change by Governor)

Attachment A: Facility Locations *

BEAUMONT JUVENILE CORRECTIONAL CENTER **(804) 556-3316**
P.O. Box 491, Beaumont, VA 23014

BON AIR JUVENILE CORRECTIONAL CENTER **(804) 323-2550**
1900 Chatsworth Avenue, Bon Air, VA 23235

CULPEPER JUVENILE CORRECTIONAL CENTER **(540) 727-3333**
12240 Coffeewood Drive, P.O. Box 1000, Mitchells, VA 22729

HANOVER JUVENILE CORRECTIONAL CENTER **(804) 537-5316**
P.O. Box 507, Hanover, VA 23069

NATURAL BRIDGE JUVENILE CORRECTIONAL CENTER **(540) 291-2129**
1425 Arnolds Valley Road, Natural Bridge Station, VA 24579-3051

OAK RIDGE JUVENILE CORRECTIONAL CENTER **(804) 323-2335**
1800 Bon Air Road, Bon Air, VA 23235

* For directions check www.djj.virginia.gov.

Attachment B: State Holidays

New Year's Day
Lee Jackson Day
Martin Luther King, Jr. Day
George Washington Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day (2 days)
Christmas Day